IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CIVIL REVISION 2680 OF 2005

DATE OF DECISION :24-10-2006

Harwinder Singh v Kuldeep Kaur

CORAM : HEMANT GUPTA,J.

Mr.R.C.Dogra, Senior Advocate, with Mr.S.K.Bawa, Advocate, for the petitioner

Mr.Hitesh Kapilish, Advocate, for the respondent

The challenge in the present petition is to the order passed by the learned Rent Controller on 09-04-2005 whereby petition filed by the respondent under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 as amended was allowed.

It is the case of the respondent-landlady that she is an Non-Resident Indian and has gone to Austaria along with her husband but now she and her husband are old and intend to lead a retired life and, therefore, she has returned to India in order to live in India. It has been found by the learned Rent Controller , after the application for leave to defend was allowed and evidence led ,that there are 5 rooms on the ground floor, one tin roof kitchen on the first floor. That the landlady intends to add more rooms on the ground floor . She has also got vacated 3 shops which have been converted as part of residential premises. Therefore, it was found that the premises are required for bonafide use as even daughter of the landlady along with her children is also going to reside with her.

Learned counsel for the petitioner has vehemently argued that the requirement pleaded in the petition was of landlady alone whereas finding has been recorded by the Rent Controller that the premises are required for her daughter and her family as well. A perusal of the site plan Exhibit P-4 shows that small area measuring 8'x14' alone is in possession of the petitioner. The remaining building is in possession of the landlady. The landlady has a right to lead peaceful life comfortably in her house and not that she must share a part of accommodation with the tenant.The

landlady is entitled to privacy and comforts of her house. Therefore, I do not find any illegality or irregularity in the findings recorded by the learned Rent Controller which may warrant interference by this Court.

Dismissed.

However, the order of ejectment shall not be executed for a period of 3 months from today provided petitioner furnishes undertaking by way of affidavit before the Rent Controller within 2 weeks from today to handover the physical possession of the property to the landlady on or before January 31,2007,and on payment the entire arrears of rent within 2 weeks. The further monthly rent shall be payable by 10th of each month.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CIVIL REVISION 4307 OF 2005

DATE OF DECISION : 24-10-2006

The Gurgaon Central Coop.Bank v P.O.Labour Court etc.

Mr.Subhash Ahuja, Advocate, for the petitioner

Mr.Pankaj Jain, Advocate, for the respondents

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order dated 13-07-2005 whereby an application filed by the petitioner for setting aside the ex-parte proceedings initiated on 06-08-2003 was dismissed.

The learned Labour Court found that reference is pending since the year 1999 and the case is fixed for filing of written statement since 20-09-2001.It has been found that 06-08-2003 was the date fixed for filing written statement subject to payment of Rs.1000/-as costs but since neither costs had been paid nor written statement had been filed, therefore, ex-parte proceedings have been rightly initiated against the petitioner . Therefore, the application was found to be without any merit.

Learned counsel for the petitioner has contended that though there is delay in filing the written statement but it is undertaken that the petitioner shall file written statement on the date fixed and also compensate the respondent-workmen for the delay in filing of the written statement by way of payment of costs in additional costs as ordered by the learned Labour Court. It is also pointed out that no evidence has been led by the workmen even after initiating ex-parte proceedings against the petitioner.

Keeping in view the fact that no evidence has been led even though the ex-parte proceedings were initiated against the management on 06-08-2003, I deem it appropriate to set aside the ex-parte proceedings subject to payment of Rs.5000/-as costs. The parties through their counsel are directed to appear before the Labour Court on 27-11-2006 on which date the petitioner shall file its written statement and also shall pay costs of Rs.5000/-along with costs as imposed by the learned Labour

Court earlier. If written statement and costs are not paid on the said date, the ex-parte proceedings shall remain operative.

With the said direction, the present revision is disposed of.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CIVIL REVISION 4823 OF 2004

DATE OF DECISION;24-10-2006

Gurpal Singh & another v Piara Singh & others

Mr.J.S.Brar, Advocate, for the petitioners

Mr.Kamaldeep Singh, Advocate, for respondent No.13

HEMANT GUPTA, J.

The plaintiffs are in revision aggrieved against the order dated 30-08-2003 whereby an application filed by the petitioners for correction of date ofdeath of deceased-Bohar Singh, Manjit Kaur and Lakhbir Singh as 31-12-1999 instead of 01-01-2000 was declined.

The learned trial Court has declined such application on the ground that it is an attempt to delay the proceedings and amendment cannot be allowed after the trial has commenced as the Court can allow amendment only after arriving at a conclusion that inspite of due diligence, the party could not raise the matter before commencement of the trial.

The reasoning given by the learned trial Court suffers from patent illegality and irregularity. The suit was filed on 15-02-2000 and, therefore, the amended provisions of CPC contained in Order 6 Rule 17 CPC are not applicable in respect of pleadings filed prior to the said amendment in terms of Section 16(2)(b) of Code of Civil Procedure(Amendment)Act,2002. The plaintiffs have sought declaration on account of the deaths of Bora Singh, Manjit Kaur and Lakhbir Singh. By amendment, the plaintiffs are not to gain anything except to bring the facts in correct perspective. Still further it is the plaintiff who has sought the correction of date of death.

Therefore, I am of the opinion that the order passed by the learned tiral Court decling the correction in the date of death is not sustainable in law.

Consequently, the said order is set aside. The petitioners are permitted to amend the pleadings so as to describe the date of death as 31-12-1999 instead of 01-01-2000.

Civil revision stands disposed of accordingly.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

FAO 572 of 2003

Ude Veer & others v Om Parkash & others

Mr.Vinod Gupta, Advocate, for the appellants

Mr.Neeraj Khanna, Advocate, for the respondents

UMA NATH SINGH, J.

This FAO by the owner of the offending vehicle arises out of an award dated 30-07-2002 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Rohtak, in MACT case No.70 of 1989 awarding a sum of Rs.1,50,000/- with 9% interest per annum in injury case of one Om Parkash having 30% permanent disability and 5% temporarily.

Learned counsel for the appellants submitted that the onus to prove that the driver of the offending vehicle was not holding a valid driving licence at the time of accident, lies on the insurance company. However, the learned Tribunal has come to a finding that the driver was not holding a valid driving licence only on account of the grounds of spelling mistakes in the driving licence issued by the transport authorities, Sonepat. Apart from that, learned counsel also submitted that in terms of the judgement of the Hon'ble Apex Court right from the case 2004(1)ACJ1 National Insurance Company Ltd. vs. Swaran Singh and others till date in such cases only the Insurance Company should be held liable to pay the compensation and in case the owner is found to have not exercised due diligence in verifying the licence, the recovery right is granted to the company.

I have carefully examined the award and also perused the statement of Urba Dutt, RW2,the licencing clerk, SDM's Office, Sonepat, who appeared with complete record as summoned by the Tribunal. The said statement on reproduction reads as under :-

"RW2-Urba Dutt, Licencing Clerk on SA

I have brought the summoned record i.e. the record of Licence NO.38450-S. It was issued in the name of Charan Jeev Singh son of Gur Charan resident of Mahalana Road, Sonepat. This licence was issued on 08-02-1989 for MMV. It was renewed till 07-02-1995.

xxxby Shri Atul Goyal, learned counsel for respondent No.2

It is incorrect to suggest that I have not brought the summoned record.

Xxx by Shri Kuldeep Singh, learned counsel for the petitioner

Nil. Opportunity given."

Thus, it appears that the licence said to have been issued to the driver of the offending vehicle was not issued in his name by the licencing authority, Sonepat.

Accordingly, I find no infirmity in the findings of the Tribunal. However, in terms of the judgement of Hon'ble Supreme Court in Swarn Singh's case (supra) the Insurance Company shall pay the compensation amount to the claimants and would be entitled to recover it from the owner.

With the aforesaid modification in the award, the FAO is hereby dismissed.

23-08-2006 (Uma Nath Singh)
* Mandeep * Judge

FAO 3529 OF 2002

Jeet Singh v Gurmej Singh & others

Mr.Anil Khetarpal, Advocate, for the appellant

UMA NATH SINGH,J.

In this FAO by the claimant against an award dated 05-06-2002 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Kurukshetra, in MACT case No.39 of 2001, learned counsel submitted that the appellant's claim petition was rejected only on the ground that he was responsible for the accident.

To get over the finding of the Tribunal, learned counsel submitted that when the Investigating Officer was summoned in witness box asRW1, he has categorically stated that he did not try to trace out the tractor responsible for causing the death of the motor-cyclist. This submission of the learned counsel does not have any bearing on the finding of the Tribunal inasmuch as the Tribunal has already held him rash and negligent and it is immaterial as to whether the accident resulted in death or injury by another vehicle after the accident had occurred due to rash and negligent driving of the claimant-appellant. This is not the appellant's case that he was not a party to the accident and the accident did not take place on account of collision between the minor cyclist and the tractor driver.

I have carefully examined Exhibit P25, the site plan which indicates that the accident took place on the left side of the victim. Accordingly, on account of dearth of material, I do not find any ground to get aside the impugned award.

Hence the same is affirmed and the appeal is dismissed.

23-08-2006
* Mandeep *

(Uma Nath Singh)
Judge

Crl Misc 14596-M of 2007

Mr.Jaideep Verma, Advocate, for the petitioners

The petitioners are facing trial in the Court of learned Judicial Magistrate First Class, Ludhiana. During the pendency of the trial, they filed an application dated 27-11-2006 (Annexure P-3) for dispensing with their personal appearance for 01-12-2006 and till final disposal of the case. The learned trial Magistrate on 01-12-2006 (Annexure P-4) allowed the exemption application on the grounds mentioned in the application. The case was adjourned to 03-02-2007 for prosecution evidence. On 03-02-2007, the learned trial Magistrate realised that inadvertently the words "for today" had been omitted in the order dated 01-12-2006. In other words, the learned trial Magistrate had, in fact, exempted the presence of the petitioners only for 01-12-2006 and not for the future dates.

Learned counsel for the petitioners submits that the petitioners have shifted to Jaipur. Besides their ages are 58 and 59 years respectively. In support of his submission, with regard to the inability of the petitioners to appear on each date, he has referred to two medical certificates dated 16-02-2007 (Annexures P-1 & P-2) in respect of the petitioners issued by Dr.Vinay Soni, M.D.Physician at Jaipur. Therefore, it is submitted that presence of the petitioners during the trial of the case is liable to be exempted.

After giving my thoughtful consideration to the matter, it is appropriate to note that the medical certificates dated 16-02-2007 (Annexures P-1 and P-2) have been issued after the filing of the application dated 27-11-2006 (Annexure P-3). These medical certificates which have been issued after the filing of the application before the trial Court for seeking exemption cannot at this stage be considered for the grant of exemption for all dates. Therefore, no fault can be found with the order of the learned trial Magistrate in holding that the exemption of the petitioner, in fact, had only been allowed for one date i.e. 01-12-2006.

Consequently, no ground is made out for interference in the impugned order.

This petition is, therefore, dismissed. However, the petitioners would be at liberty to file fresh application before the trial Court, if so, advised.

{S.S.Saron}

Judge

08-03-2007

* Mandeep *

Crl Misc 14858-M of 2007

Mr.K.S.Sandu , Advocate, for the petitioner

Notice of Criminal Miscellaneous No.14858-M of 2007 to A.G., Punjab.

On the asking of the Court,Mr.Jayender Chandail, AAG, Punjab accepts notice.

Heard the learned counsel for the parties.

The petitioner seeks extension of parole by one week so as to enable him to perform the marriage of his niece. The petitioner is undergoing imprisonment on his conviction for the offences under Sections 302/201/34 IPC. He earlier filed Criminal Misc No. 12607-M of 2007 so as to enable him to solemnise the marriage of his son which was fixed for 06-03-2007. By an order dated 05-03-2007 passed by this Court, the petitioner was granted parole subject however to the satisfaction of the District Magistrate, Nawan Shahar. The petitioner , however, was directed to surender in the sub jail at Ropar where he is undergoing imprisonment by 5 pm today.

The present petition has been filed seeking extension of parole on the ground that the marriage of his brother's daughter,namely,Kuldeep Kaur is to be solemnised tomorrow i.e. on 10-03-2007. Therefore, he seeks extension of parole by one week.

After hearing the learned counsel for the parties and perusing the paper book as also invitation card, it may be noticed that marriage of Kuldeep Kaur daughter of Late Jarnail Singh is to be solemnised tomorrow on 10-03-2007. The petitioner is already on parole till date. The niece of the petitioner does not have father and no prejudice would be caused in case he is granted extension in parole by 3 days.

In the circumstances, the parole granted to the petitioner is extended by 3 days and bail bonds already furnished shall continue to be operated. Consequently, the petitioner shall surrender in sub jail at Ropar on 12-03-2007 by 5 pm.

This petition stands disposed of accordingly.

Copy of the order be given dasti.

{S.S.Saron}

Judge

09-03-2007

Crl Misc 76125-M of 2006

Mr.R.S.Bajaj, Advocate,for the petitioner

Mr.Jayender Chandail, AAG, Punjab

The petitioner seeks pre-arrest bail. The allegations against him are that along with others, he had forcibly put liquor in the mouth and on the head of the complainant-Vir Singh after stopping the bus being driven by him.

Learned counsel for the petitioner contends that petitioner is a juvenile and his date of birth is 13-04-1990, therefore, it is contended that in view of the provisions of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (Act for short), the petitioner is entitled to the concession of bail. Even otherwise, it is contended that the matter has been compromised with the complainant. However, offence under Section 295 IPC is non-compundable and, therefore, an application has been submitted that said offence is , in fact, not made out. It is also contended that two co-accused of the petitioner have been granted regular bail and another co-accused has been granted pre-arrest bail.

In response, learned counsel for the State submits that no compromise has been effected between the parties. Petitioner even though is a juvenile, is liable to be confined to an observation home.

After giving my thoughtful consideration to the matter, it may be noticed that Section 12 of the Act provides for release on bail to a Juvenile. The limitation is only if there appears reasonable ground for believing that the release of the juvenile is likely to bring him in association with any known criminal or he is exposed to moral,physical or psychological danger or that his release would defeat the ends of justice. This Court in Balkar Singh v State of Punjab 2005(1) RCR (Crl.) 576 held that grant of bail to a juvenile is mandatory and it can be declined on the grounds as mentioned above.

In the present case, nothing has been shown that the release of the petitioner would bring him in association with any criminal or he would be exposed to moral,physical or psychological danger or that his release would defeat the ends of justice. Learned counsel for the petitioner has stated that the matter has been

compromised. Though this is disputed by the learned counsel for the State.In any case the custody of the petitioner is not required for the purposes of investigation.

In the circumstances, criminal miscellaneous petition is allowed. In the event of arrest of the petitioner, he shall be admitted to bail on his furnishing personal bonds and surety to the satisfaction of the Arresting Officer/Investigating Officer subject to the conditions contained in order dated 05-12-2006 granting interim bail.

{S.S.Saron}
Judge

09-03-2007

- Mandeep *

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRIMINAL APPEAL 733-SB OF 2001

DECIDED ON :14-05-2007

Ram Kumar & another

....Appellants

Versus

State of Punjab

....Respondent

AND

CRIMINAL APPEAL 770-SB OF 2001

DECIDED ON : 14-05-2007

Surinder Kumar alias Sunny

....Appellants

Versus

State of Punjab

....Respondent

AND

CRIMINAL APPEAL 1056-SB OF 2001

DECIDED ON : 14-05-2007

Harminder Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

Present: Mrs.Baljit Kaur Mann, Advocate, and Mr.P.S.Hundal, Advocate,for the appellants

Mr.Mehardeep Singh, AAG, Punjab

MAHESH GROVER, (ORAL)

This order will dispose of abovesaid three appeals as these have arisen out of the same judgement.

The appellants have assailed the conviction and sentence awarded to them by the Additional Sessions Judge, Amritsar, vide his judgement dated 31-05-2001.

All the appellants were sent up to face trial for having committed offences under Sections 363/366/376(2)(g)/342/506 /34 IPC in a case registered vide FIR No. 8 dated 19-01-1998.

A 17 year old girl, a student of 10+1 in Kairon School at Amritsar was allegedly taken away by the appellants on 17-01-1998 to a house in a locality in the vicinity of the bus stand when she was waiting to catch the bus to go to her residential school. In the said house, she was subjected to rape by the 4 accused persons. The prosecutrix is said to have returned home and apprised her mother of the incident. Her father who is ASI with the police department was away in connection with his duties and had returned on 19-01-1998 upon which he was apprised of the situation and a formal FIR was registered against the accused persons.

The police after completing its investigation prima facie established the complicity of the appellants and submitted a challan against them under Section 173 Cr.P.C.

Accordingly, all the appellants were charged for having committed the offences under the provisions of law which have been

detailed above.

In order to establish the case against the appellants, the prosecution examined as many as 9 witnesses which included testimony of the doctors and the report of the Chemical Examiner by way of medical evidence.

In their statements recorded under Section 313 Cr.P.C., all the appellants pleaded false implication on account of enimity. The plea of alibi was also set up wherein Surinder Kumar alias Sunny pleaded that he was on duty at that point of time. Similarly, Balwant Raj also set up the plea of alibi to say that he was on duty on that day with B.M.Munjhal with whom he is working as gunman.

The trial Court after appraisal of the evidence before it, came to the conclusion that the prosecution had been able to establish the case against all the appellants and accordingly convicted them for having committed the offence under Section 376(2)(g) IPC and setenced them to undergo imprisonment, the details of which are as follows :-

"Under Section 363 IPC	*To undergo RI for 5 years and to pay fine of Rs.500/-each,in default of payment of fine,to further undergo RI for 3 months*
*Under Section 376(2)(g_*	*To undergo RI for 10 years and to pay a fine of Rs.5000/- each and in default of payment of fine, to further undergo RI for 3 months*

In the present appeals against the aforesaid sentence and conviction awarded to them by the learned Additional Sessions Judge vide his judgement dated 31-05-2001, the appellants have pleaded that the prosecutrix was concededly more than 17 years of age and that it is a clear case where she was the consenting party and in view of this, no offence was made out against them.

That apart, it was pleaded that in the eventuality of this Court coming to the conclusion that the offence as alleged against the appellants, has been committed, a lenient view be taken as they are first offenders and that there is indeed some element of consent which should be inferred from a reading of the testimony of the prosecutrix.

The aforesaid plea as raised by the learned counsel for the appellants was stoutly resisted by the learned State counsel who contended that there is ample evidence on record to establish the commission of the aforesaid offence and that the appellants do not deserve any leniency for the reason that they being police personnel, belonged to a disciplined force and were expected to behave responsibly.

I have heard the learned counsel for the parties and have perused the evidence on record.

The prosecutrix has given her age as 17 years and the opinion of the doctor who wanted to probe her age, but due to the non-cooperation of the prosecutrix could not get the ossification test done and gave her age as anything between 19 to 20 years and qualified it with her physical description regarding development of the secondary sexual characters of the prosecutrix.

It would be thus safe to assume that the age of the prosecutrix

was concededly more than 17 years .A strong emphasis was made by the learned counsel for the appellants to contend that the prosecutrix in her testimony had stated that she was waiting at bus stand where she was approached by 3 of the accused persons, namely, Surinder Kumar alias Sunny, Raj Kumar alias Raju and Harminder Singh alias Reta. All the 3 accused are said to have asked her to come on the scooter and she willingly accompanied them which is reflective of the fact that she was the consenting party. This coupled with the medical testimony shows her to be habitual sexual intercourse which was sufficient to establish her consent in the entire episode.

On a careful examination of the statement of the prosecutrix, it transpires that she was certainly familiar with Surinder Kumar alias Sunny who was also known to the father of the proseuctrix. She has stated that she knew him for the last one and a half years prior to the occurrence. In these circumstances, she probably could have consented to go with him. Her coyness, however, prevented her from stating so in as many words that she was known to Surinder Kumar alias Sunny and was also probably used to accompanying him earlier also . But this factor alone does not suggest that she had consented to have a sexual liason with Surinder Kumar or for that matter with three other persons who ultimately made her a victim of their lust.

The medical testimony of PW2 is as follows :-

"1.*Secondary sex charac teristics are developed.*

2.One cm abrasion present 10 cm below the right ear.

3.Breast is developed. Axillary haris were present.

4.Teeth mark were present on the right breast in the

outer quardrant of the breast. The number of impressions was 3.

5.Abrasion 3cm x 4 cm was present on the right thigh on the medial side.

6.Abrasion 2 cmx3cm was present on the left thigh on the medial side.

7.No bleeding from vagina,Hymen margins were regular. No tear, no oozing from the hymen four chetty was in tact. Vaginal swabs No.1 from lower vagina and 2) from upper vagina was taken and sent for chemical examination."

The possibility of the prosecutrix having been subjected to sexual intercourse forcibly has not been ruled out by the medical opinion on record.

There is, thus, no escape from the conclusion that she was indeed subjected to rape if the sequence of events coupled with medical testimony are taken together.

In any eventuality,one need not necessarily look at the corroborative evidence if the testimony of the prosecutrix is inspiring. The Supreme Court in Ram Kirpal v State of M.P.2007 AIR SCW 2198 held as follows:- "*A culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if he fails due to reasons beyond his control,he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with*

the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. The word "attempt" is not itself defined, and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of Section 511 require. An attempt to commit a crime is to be distinguished from an intention to commit it; and from preparation made for its commission. Mere intention to commit an offence, not followed by any act cannot constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it,or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under Section 122 (wagging war against the Government of India) and Section 399 (preparation to commit dacoity). The dividing line between a mere preparation and an attempt is sometimes thin and has to be decided on the facts of each case. There is a greater degree of determination in attempt as compared with preparation----------

The sine qua non of the offence of rape is penetration and not ejaculation. Ejaculation without penetration constitutes an attempt to commit rape and not actual rape. Definition of "rape" as contained in Section 375 IPC refers to "sexual intercourse" and the explanation

appended to the Section provides that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Intercourse means sexual connection. In the instant case that connection has been clearly established. Courts below were perfectly justified in their view."

In the light of the above,her testimony reveals that as a gullible girl, she had probably agreed to accompany Surinder Kumar alias Sunny who exploited her confidence and invited his friends to ravish her. There is absolutely no reason why she would implicate all the 4 persons. No enmity has been proved on record as pleaded by the appellants in their defence.

Rather the prosecutrix has named these persons as her sense of injury coupled with betrayal by Surinder Kumar alias Sunny whom she had trusted,has forced her to bring the truth out in open.

The argument of the learned counsel for Surinder Kumar alias Sunny that at least the mitigating factor was her consent qua him is also not acceptable as he became the prime-preparator of the offence when he permitted 3 more persons,his co-accused to subject the innocent girl to the brutality of rape. His role, therefore, is rather on a more vicious footing than the others.

Having regard to the aforesaid and in view of the inspiring testimony of the prosecutrix and in the absence of any other evidence to establish false implication as also the fact that the plea of alibi set up by the appellants has not been proved by any cogent evidence, the only inescapable conclusion is that the prosecutrix was indeed subjected to rape by all the appellants in a brazen manner.

Accordingly, all the appeals are without any merit and are

dismissed as such. The prayer for reduction in sentence is also without any merit considering the fact that all the persons who were uniformed persons were expected to maintain decency in public life.

The sentence awarded by the trial Court is accordingly maintained.

{Mahesh Grover}
Judge

14-05-2007
** Mandeep **

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

CRIMINAL APPEAL NO. 560-SB OF 1996

DECIDED ON : 08-05-2007

Chint Kaur & another

....Appellants

Versus

The State of Punjab

....Respondent

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

Present: Mr.Bipan Ghai, Advocate, with Mr.G.S.Sandhawalia, Advocate for the appellants

Mr.Mehardeep Singh, AAG, Punjab

MAHESH GROVER, J (ORAL)

The present appeal is directed against the judgement of the Additional Sessions Judge, Fatehgarh Sahib, dated 05-08-1996 convicting the appellants under Section 304-B and sentencing them to undergo imprisonment for a period of 7 years and to pay a fine of Rs.2000/-and in default thereof to undergo further RI for 6 months,as also under the provisions of Section 498-A , IPC for a period of 2 years and to pay a fine of Rs.1000/-and in default thereof to undergo RI for a period of 3 months.

Manjit Kaur whose marriage was solemnised on 24-04-1988 with Harbans Singh, died within 2 months of her marriage i.e. on 26-06-

1988. The death was on account of her having consumed aluminium phosphide. The FIR was lodged at the instance of the father of the deceased, Harinder Singh, PW3 who alleged that her daughter was being tormented for not bringing sufficient dowry and since demands of appellants could not be met, she was done to death.

The police after investigating the matter, prima facie found that the appellants along with 3 other persons, namely, Balbir Singh-Davinder Kaur and Harmeet Singh were responsible for causing the death of Manjit Kaur and accordingly presented a challan persuant to the provisions of Section 173 Cr.P.C. against 5 persons.

The trial Court charged and tried all the 5 accused persons for having committed the offences under Section 304-B and 498-A, IPC. The appellants along with other accused persons pleaded not guilty and claimed trial.

The prosecution in order to establish its case against the accused persons, examined number of witnesses which included medical evidence to establish the cause of death on account of consumption of a poisonous substance.

The appellants in their statements recorded under Section 313 Cr.P.C. pleaded false implication and stated that the deceased was, in fact, having relations with one Bhola whom she wanted to marry and since her desire was not fulfilled, she took recourse to the extreme step of taking her own life.

The trial Court after appraisal of the evidence before it, came to the conclusion that Harbans Singh and Chint Kaur were guilty of having committed offences under Sections 304-B and 498-A IPC and sentenced

them to undergo imprisonment for various periods as detailed above.

The other accused persons, namely,Balbir Singh, Davinder Kaur, Harmeet Singh,were acquitted.

Aggrieved against the judgement of the Additional Sessions Judge, convicting the appellants and sentencing them as detailed above, the present appeal has been preferred.

It was contended by the learned counsel for the appellants that prosecution has miserably failed to establish its case against them. A complaint had been filed by the father of the deceased under the provisions of Section 406 of the Dowry Prohibition Act and 406 IPC which was dismissed. This, according to the learned counsel for the appellants was indicative of the fact that no demands of dowry had been made and once this is established,charge under section 304-B IPC could not be substantiated against the appellants.

It was further contended that the deceased was unhappy because according to the evidence on record, appellant No.2 was having an extra-marital affairs which made the deceased unhappy forcing her to take her own life and in view of these circumstances at best a case under Section 306 IPC could be made out against appellant No.2.

In so far as appellant No.1 is concerned, there is absolutely no evidence against her and trial Court while awarding acquittal to other co-accused ought to have acquitted appellant No.1 as well on the principle of parity as the evidence against appellant No.1 and the persons who have been acquitted, is the same.

On the other hand, the aforesaid contentions of the learned counsel for the appellants were sought to be controverted by the learned

counsel for the State who contended that the death had taken place within 2 months of the marriage inviting the strong presumption of law under Section 113-B of the Indian Evidence Act. There is sufficient evidence on record to show that demands of dowry had been made and in view of this, there was no escape from the conclusion that the death having taken place within short period of marriage was ostensibly for the reason that demands of dowry were made and that the sentence and conviction according to the learned counsel for the respondents were justified.

I have heard the learned counsel for the parties and have perused the record.

Appellant No.2 was a reluctant groom. He was forced into matrimony by the deceased as prior to the marriage, he had a liason with her and thereafter resiled from his promise to marry her. This had forced the deceased to lodge a complaint against him with the police. He had been compelled to marry her under these circumstances in order to avoid the possibility of his involvement in a criminal case. That apart, there is ample evidence on record in the shape of the statement of the prosecution witnesses establishing the demand of certain articles such as Refrigerator and demand of some amount which evidence is inspiring enough and cannot be discarded.

That apart, the death has taken place within 2 months of the marriage inviting a strong presumption of law which the appellants were required to rebut by producing cogent evidence on record which could persuade the Court to come to a different conclusion.

Even the statement of the appellants under Section 313 Cr.P.C. reveals an attempt to tarnish the image of the deceased by saying that she

was having an affair with some other person prior to her marriage whereas, in fact, appellant No.2 himself was involved in an extra-marital affair revealing the deceitful aspect of the character of appellant No.2.

Once substantial evidence is there on record to establish the demand of dowry and the death takes place, within a short period of 2 months,the ingredients of Section 304-B IPC are more than amply satisfied. The onslaught of the presumption of law has to be offset by substantive evidence which has not come.

Having regard to the aforesaid, there is absolutely no reason to differ with the findings recorded by the trial Court.

Accordingly, the appeal qua the appellant No.2 is dismissed.

In so far as appellant No.1 is concerned, there is no direct evidence to involve her in the commission of offence under Section 304-B IPC and at best the allegations of cruelty could be substantiated against her. Accordingly, the charge against her under Section 304-B fails and she is directed to be convicted under Section 498-A IPC.

At this stage, learned counsel for the appellant No.1 pleaded that appellant No.1 was 65 years of age at the time when she was convicted and now after 11 years, she would be 76 years of age and to send her to custody at this age would be extremely harsh. Having regard to the aforesaid that appellant No.1 is in the evening of her life and that the appeal is of the year 1996 and no useful purpose would be served by sending her to undergo imprisonment at this age, I deem it appropriate to reduce the sentence of the appellant No.1 to that of already undergone.

With the aforesaid modifications, this appeal stands disposed of.

{Mahesh Grover}
Judge

08-05-2007

- ** Mandeep **

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRIMINAL APPEAL 229-SB OF 1999

DECIDED ON : 14-05-2007

Kuldeep Kumar alias Bittu & another

....Appellants

Versus

The State of Punjab

....Respondents

Present: Mr.Sudhir Sharma, Advocate, for the appellants

Mr.Mehardeep Singh, AAG, Punjab

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

MAHESH GROVER, J (ORAL)

This is an appeal against the judgement of the Additional Sessions Judge, Kapurthala, dated 11-02-1999 by which the appellants Kuldeep Kumar and Avtar Singh were convicted and sentenced under the provisions of Section 376(g) of the Indian Penal Code (for short IPC) to undergo imprisonment for a period of 10 years and to pay a fine of Rs.500/- each.In default of payment of fine,they were directed to undergo further RI for 3 months.

The occurrence in this case is said to have taken place on 01-10-1997 at about 9-30 pm when the prosecutrix aged about 13 years was forcibly lifted by the appellants when she had stepped out of her house to

urinate. Avtar Singh is said to have gagged her mouth and thereafter he forcibly undressed her and committed sexual intercourse with her. Kuldeep Kumar also subjected her to rape. Harbhajan Kaur,mother of the prosecutrix is said to have come to the house where the prosecutrix was locked in a room and upon her knocking at the door, the accused fled away after opening it.

An FIR is said to have been lodged on 03-10-1997 when the father of the prosecutrix returned back from Ludhiana where he had gone. Upon the lodging of the FIR on the statement of the prosecutrix, a case under Sections 376/342/34 IPC was registered against them.

After completion of the investigation, the police submitted a challan against the appellants persuant to the provisions of Section 173 Cr.P.C. before the Court of JMIC,Phagwara,who committed the case to the Sessions Judge at Kapurthala.

Accordingly, the appellants were charged for having committed the offence under Section 376(g) IPC to which they pleaded not guilty and claimed trial.

In order to establish the charge against the appellants, the prosecution examined as many as 10 witnesses which included the testimony of the Medical Officer of Civil Hospital,Phagwara,who was examined as PW2 as also the evidence of Dr.Jasmit Walia, Radiologist who was examined as PW4.

The report of the Chemical Examiner was also produced in evidence as Exhibit PD.

In the statement recorded under Section 313 Cr.P.C., the appellants pleaded false implication and contended that on 02-10-1997

Sohan Singh,son-in-law of Parkash Ram,father of Avtar Singh alias Tari came from Zira to his in-laws at Jamalpur. Ram Parkash ,father of the prosecutrix under the influence of liquor had an altercation with Sohan Singh,pursuant to which he is said to have suffered some injuries. In order to pre-empt any legal action by Sohan Singh,father of the prosecutrix lodged the present FIR against the appellants.

After perusal of the evidence before it, the trial Court came to the conclusion that the appellants were guilty of having committed the offence under Section 376(g) and convicted and sentenced them as detailed above.

The appellants aggrieved by the aforesaid conviction and sentence awarded to them by the trial Court have preferred the instant appeal.

It was contended by the learned counsel for the appellants that the medical examination in the shape of testimony of PW2 clearly ruled out the commission of offence of rape and at best if the statement of the prosecutrix is to be read along with the evidence of PW2, it would establish an attempt to commit rape and, therefore, the offence would have to be read along with section 511 IPC.

On the other hand, learned counsel for the State contended that a reading of the testimony of the prosecutrix who is of tender age of 13 years,does not suggest any exaggeration in the prosecution version and in view of this, no corroborative evidence is required to establish the guilt of the appellants.

I have heard the learned counsel for the parties and have perused the record.

The testimony of Jaswinder Kaur, Medical Officer,PW2 shows that there were no marks of injury on the person of the prosecutrix. She further went on to state that there is no sign suggestive of sexual intercourse having been committed with the prosecutrix and thereafter opined that an attempt for sexual intercourse cannot be ruled out. She also testified that the report of the Medical Examiner did not establish the presence of any semen.

The age of the prosecutrix according to her own showing is about 13 years whereas the report of Radiological Examiner establishes her age to be between 14 to 16 years. There is a categoric denial by Dr.Jasmit Walia, PW4 when suggestions were put to her that the age of the prosecutrix could be 18 years. Having regard to the aforesaid evidence, the age of the prosecutrix was concededly less than 16 years of age which would imply that her consent was immaterial if she had been subjected to sexual intercourse.

In this view of the matter, when the medical opinion does not conclusively establish the sexual intercourse, the testimony of the prosecutrix has to be examined with great circumspection and care.This is more so because the appellants have pleaded false implication on account of some animosity resulting from an incident immediately preceding the present occurrence.

A perusal of the testimony of the defence witnesses reveals that they were related to appellants and interested witnesses and as such their testimony has to be viewed as being tainted more so when no such complaint was ever lodged with the police regarding the incident in which the father of Avtar Singh is said to have suffered some injury. That apart,it

is not expected of a parent to make his daughter face the allegation of rape and that too a girl of such a tender age of 13 years. The plea of false implication, therefore, falls flat on its face.

Now to examine the testimony of the prosecutrix who appeared as PW5, she has categorically stated that she was forcibly taken to the house of Kuldeep Kumar-appellant by Avtar Singh alias Tari who had gagged her mouth and had also tied her arms. She is also consistent in her testimony that Tari had undressed her and forcibly raped her and then Kuldeep Kumar followed suit. She was subjected to confinement for a period of two and a half hours and was discovered in a naked condition by her mother. She also testified that her blood stained salwar was washed by her mother which deprived the prosecution of the crucial evidence.

Picking up the strains from the testimony of the prosecutrix, it is amply clear that there was absolutely no reason or motive for her to falsely implicate the appellants.

The Hon'ble Supreme Court in State of Rajasthan v Biram Lal (2005) 10 Supreme Court Cases 714 and State of M.P. V Dayal Sahu (2005) 8 Supreme Court Cases 122 has held that in offences such as these if the evidence of the prosecutrix is inspiring enough and then even if the circumstantial evidence is not so conclusive, the conviction can still be based solely on such a testimony of the prosecutrix. Needless to say that each case has to be examined in its own perspective to come to such a conclusion. In Dayal Sahu's case (supra) it was held as under :-

14.A plethora of decision by this Court as referred to above would show that once the statement of the prosecutrix inspires

confidence and is accepted by the courts as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the courts for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. It is also noticed that minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. Non-examination of doctor and non production of doctor's report would not be fatal to the prosecution case, if the statements of the prosecutrix and other prosecution witnesses inspire confidence. It is also noticed that the court while acquitting the accused on benefit of doubt should be cautious to see that the doubt should be a reasonable doubt and it should not reverse the findings of the guilt on the basis of irrelevant circumstances or mere technicalities."

In Biram Lal's case (supra) the Hon'ble Supreme Court held in para 15 as under :-

"15.....It is not the law that in every case version of the prosecutrix must be corroborated in material particulars by independent evidence on record. It all depends on the quality of the evidence of the prosecutrix. If the court is satisfied that the evidence of the prosecutrix is free from blemish and is implicitly reliable, then on the sole testimony of the prosecutrix, the conviction can be recorded. In appropriate cases, the court may look for corroboration from independent source or from the circumstances of the case before recording an order of conviction...."

The Supreme Court in Dayal Sahu & Biram Lal's case (supra)

has held that if the testimony of the prosecutrix is trust worthy. The Court need not look for other corroborative evidence to conclude that rape has been committed or not on her . The testimony of the prosecutrix,a young girl of 13 years is, in the opinion of this Court, trustworthy in the absence of any cogent evidence to suggest false implication of the appellants. The participation in the offence by the appellants is, therefore, conclusively established.

Even the learned counsel for the appellants had by implication of his argument admitted the complicity of the appellants as the argument raised was that the offence of rape had not been concluded and it was at best only an attempt which should be inferred from the evidence on record.

Having thus come to the conclusion that the appellants were indeed involved in the incident, this Court now embarks upon to examine as to what offence has been committed by the appellants and whether the offence under Section 376(g) has been committed by the appellants or that only an attempt was made as pleaded by the learned counsel for the appellants. The crucial evidence in this regard would be the medical testimony of PW2 Dr.Jaswinder Kaur who found no marks of injury on the person of the prosecutrix. She also categorically ruled out the presence of any sexual activity as the vagina admitted 2 fingers with great difficulty. No fresh abrasion or tear was noticed and no bleeding or redness or discharge from the hymen was seen. On the strength of this, she has categorically opined that only an attempt could have been made.

The probability of the prosecutrix who was a young girl with innocent frame of mind having not comprehended the complete sexual act which is also strengthened from the medical evidence on record, cannot be

ruled out.

The Court is left with no option but to enter into the realm of the probabilities. It thus seems that even though the appellants had forcibly taken the prosecutrix to a room, confined her there for two and a half hours and undressed her with a complete intention of committing sexual intercourse upon her, had ultimately only succeeded in making an attempt in furtherance of their heinous crime.

The medical testimony completely belies completion of sexual act to establish the charge of rape against the appellants.

In Ramkirpal son of Shyamlal Charmakar versus State of Madhya Pardesh 2007 AIR SCW 2198 , the Supreme Court held as follows :-

"*A culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if he fails due to reasons beyond his control,he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. The word "attempt" is not itself defined, and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of Section 511 require. An attempt to commit a crime is to be distinguished from an intention to commit it; and from preparation made for its commission. Mere intention to commit an offence, not followed by any act cannot*

constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it,or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under Section 122 (wagging war against the Government of India) and Section 399 (preparation to commit dacoity). The dividing line between a mere preparation and an attempt is sometimes thin and has to be decided on the facts of each case. There is a greater degree of determination in attempt as compared with preparation----------

The sine qua non of the offence of rape is penetration and not ejaculation. Ejaculation without penetration constitutes an attempt to commit rape and not actual rape. Definition of "rape" as contained in Section 375 IPC refers to "sexual intercourse" and the explanation appended to the Section provides that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Intercourse means sexual connection. In the instant case that connection has been clearly established. Courts below were perfectly justified in their view."

In view of the aforesaid, the conviction of the appellants is hereby modified from section 376(g) to that under Section 376)g read with section 511 IPC.

Consequently, the sentence is to be toned down accordingly.

The appellants are , therefore, directed to undergo RI for a period of 5 years.

However, keeping in view the dastardly and the brazen act by which the appellants violated the innocence of a 13 year old girl, they shall also be required to pay a fine of Rs.30,000/-each to the parents of the prosecutrix to be disbursed to the prosecutrix. In the event of failure of the appellants to deposit the aforesaid fine within a period of 4 months from today, they shall further be directed to undergo RI for one year.

With the aforesaid modification, this appeal stands disposed of.

{Mahesh Grover}
Judge

14-05-2007

- ** Mandeep **

Crl Misc 39043-M of 2007

Mr.T.S.Sangha, Advocate, for the petitioner

Mr.I.P.S.Sidhu, Senior DAG, Punjab

Heard learned counsel for the parties.

FIR has been registered on the complaint of the prosecurix alleging that the petitioner has committed rape with her against her consent. When the prosecutrix resisted, the petitioner threatened her that he would cause her injuries. The petitioner also tore off her shirt and after committing rape, he ran away. As per the Chemical Examiner's report, no spermatozoa was found on any of the exhibits which were sent to the Chemical Examiner for analysis. Doctor has also opined that it is difficult to opine that whether rape has been committed because Chemical Examiner's report does not show spermatozoa on any of the exhibits. However, the possibility cannot be ruled out. Learned counsel for the petitioner has submitted that SP (Detective) Bathinda has conducted enquiry and in terms of his report dated 18-07-2007 he has observed that the petitioner was innocent in the case. The effect of the evidence of the doctor and the report of SP (Detective) is to be gone into and considered by the learned trial Court after evidence has been led. Petitioner is in custody since 01-04-2007. So far, no witness has been recorded and the case is fixed for prosecution evidence for 26-11-2007. The trial in the case is likely to take time.

In the circumstances, the petitioner on his furnishing personal bonds and surety to the satisfaction of CJM, Mansa, shall be admitted to bail.

Disposed of.

{S.S.Saron}
Judge

23-08-2007

** Mandeep **

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRIMINAL MISC 39455-M OF 2007

DECIDED ON : 23-08-2007

Raminder Singh & another

....Petitioner

Versus

State of Punjab

....Respondent

Present: Mr.Vikram Chaudhari, Advocate, for the petitioners

Mr.I.P.S.Sidhu, Senior DAG, Punjab

S.S.SARON, J (ORAL)

Heard learned counsel for the parties.

Petitioners pray for bail pending trial for the offences under Sections 363/366/376/341/506/34 IPC in case FIR No. 80 dated 27-08-2006. It has been alleged in the case that the petitioners have committed rape on the two prosecutrixes. During deposition in Court, the prosecutrix who appeared as PW1 did not support the case of the prosecution. She was declared hostile and was cross examined by Addl.P.P. The prosecutrix who appeared as PW2 also did not support the prosecution case and she was also declared hostile and was cross examined by Addl.P.P. The effect of these statements is to be considered and gone into after trial of the case. The prosecutrixes, however, gave statements under Sections 164 Cr.P.C. where they have fully corroborated the prosecution version. This aspect, however, is not supported during the deposition in the Court. The age of the prosecutrixes also requires consideration. The fact that both the

prosecutrixes have resiled from their statements that were given by them during investigation and under Section 164 Cr.P.C would entitle the petitioners for the grant of bail.

Consequently, the petitioners on their furnishing personal bonds and surety each to the satisfaction of the learned CJM, Amritsar, shall be released on bail.

Disposed of.

{S.S.Saron}
Judge

23-08-2007
** Mandeep **

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRIMINAL MISC 40266-M OF 2007

DECIDED ON : 23-08-2007

Chaman Lal

....Petitioner

Versus

State of Punjab

....Respondent

CORAM : HON'BLE MR.JUSTICE S.S. SARON

Present: Mr.Gurcharn Dass, Advocate, for the petitioner

Mr.I.P.S.Sidhu, Senior DAG, Punjab

S.S.SARON, J (ORAL)

The earlier application for bail bearing Crl Misc No. 23643-M of 2007 filed by the petitioner was dismissed as withdrawn vide order dated 24-05-2007 (Annexure P-8). It was stated by the learned counsel for the State that 5 more cases of NDPS Act are pending against the petitioner. In view of the said statement, the earlier application was dismissed as withdrawn.

Learned counsel for the petitioner,however, further submits that the petitioner now seeks interim bail as his wife is pregnant and the expected date of delivery is 30-08-2007. He has referred to medical reports Annexures P-2 to P-5. It is submitted that in view of the expected delivery of the wife of the petitioner, the petitioner may be granted interim bail for a period of 2 months. Learned State counsel has submitted that there are 5 cases registerd against the petitioner and in case he is on bail, he is likely to

indulge in similar activities. Learned counsel for the petitioner, however, states that in two of the cases, the petitioner has been acquitted and three are pending trial . Be that as it may, keeping in view the condition of the wife of the petitioner, the petitioner on his furnishing personal bond and 2 sureties to the satisfaction of CJM, Roopnagar,shall be admitted to interim bail for a period of one month operative from the date of his release. The learned CJM shall order the release of the petitioner on the condition that one of the sureties out of the two furnishd by the petitioner shall be a respectable person of the village of the petitioner who shall undertake for the maintenance of good behaviour of the petitioner while he is on bail.

Disposed of.

{S.S.Saron}
Judge

23-08-2007
** Mandeep **

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRIMINAL MISC 40699-M OF 2007

DECIDED ON : 23-08-2007

Sukhwinder Singh

....Petitioner

Versus

State of Punjab

....Respondent

Present: Mr.T.S.Sangha, Advocate, for the petitioner

Mr.I.P.S.Sidhu, Senior DAG, Punjab

S.S.SARON, J (ORAL)

Heard learned counsel for the parties.

Petitioner prays for bail pending trial in respect of offences under Sections 420/467/471/406 IPC and under Section 24 of the Emmigration Act, in case FIR No. 78 dated 06-04-2007 registered at PS City Kapurthala. FIR has been registered on the statement of Rasal Singh who has alleged that the petitioner and his son Bablu had cheated him of Rs.12 lakhs. They had taken his passport and showed him forged visas.

It is submitted that petitioner is not a travel agent. He is not even associated with a travel agency. He has no office of travel agency. He is a driver and owns a small vehicle i.e. tempo at Kapurthala. The complainant also owns the same vehicle. Both use the commercial vehicle for selling fruits and vegetables. Sometimes, the parties engaging them are common and disputes arise between tehm as regards the apportionment of

the fares collected. On account of this, it is submitted that the petitioner has been falsely implicated. No recovery even has been effected from the petitioner.

The petitioner is in custody since 09-05-2007. The investigation in the case is complete and charge has been filed in Court. In the circumstances, further imprisonment of the petitioner would be unnecessary.

Consequently, the petitioner on his furnishing personal bond and surety to the satisfaction of the learned trial Court at Kapurthala, shall be admitted to bail.

Disposed of.

{S.S.Saron}

Judge

23-08-2007

** Mandeep **

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRIMINAL MISC 33688-M OF 2007

DECIDED ON : 23-08-2007

Adarsh Singh Bedi & others

....Petitioners

Versus

State of Punjab

....Respondent

Present: Mr.Anupam Gupta, Advocate, for the petitioners

Mr.I.P.S.Sidhu, Senior DAG Punjab

Mr.M.S.Uppal, Advocate, for the complainant

S.S.SARON, J (ORAL)

Heard learned counsel for the parties.

Learned counsel for the State has submitted on instructions from ASI Darshan Singh, PS City Mansa that petitioners have joined the investigation and their custody is not required for the purposes of investigation.

Learned counsel for the complainant has,however, opposed the application for grant of pre-arrest bail. It is submitted that earlier FIR lodged on 05-11-2006 (Annexure P-5) at PS Hari Nagar, New Delhi was only in respect of one of the incidents. The present FIR dated 23-04-2007 (Annexure P-1) that has been registered is more broad based and gives the details of the harrasment and misappropriation that has been caused and committed by all the petitioners. It is submitted that the role attributed to

the petitioners would disentitle them for the concession of pre-arrest bail.

After hearing the learned counsel for the parties and perusing the record, it may be appropriate to note that the dispute between the petitioners and the complainant is a matrimonial dispute. Husband of the complainant,namely, Devinder Singh has been granted bail in a case registered against him on 05-11-2006 (Annexure P-5) at PS Hari Nagar, New Delhi. In the present FIR, he has admittedly been granted regular bail vide order dated 11-05-2007 (Annexure P-2) by the learned CJM, Mansa. Even the parents of Devinder Singh, the husband of the complainant have been granted regular bail in terms of the order dated 10-05-2007 (Annexure P-3) passed by the learned CJM, Mansa. The State does not require the custody of the petitioners for the purposes of investigation.

In view of the aforesaid facts and circumstances , the interim bail granted on 24-05-2007 is made absolute subject to the provisions of Section 438 Cr.P.C.

Disposed of.

{S.S.Saron}
Judge

23-08-2007
** Mandeep **

Crl Misc 41617-M of 2007

Mr.Salil Bali, Advocate, for the petitioners

Mr.I.P.S.Sidhu, Senior DAG, Punjab

Learned counsel for the petitioners submits that petitioners have filed Crl Revision No. 1062 of 2007 assailing the order dated 23-05-2007 whereby the petitioners have been summoned under Section 319 Cr.P.C. The said petition is listed for hearing for 11-09-2007 before another Bench (Hon'ble Mr.Justice Uma Nath Singh).

Learned counsel for the State has submitted that the complainant side has filed Crl Misc No. 14404-M of 2007 which is listed for hearing on 14-09-2007 before the Bench of Hon'ble Mr.Justice Nawab Singh.

Learned counsel for the petitioners pray that since all the petitions arise out of the same FIR, these be listed together.

Put up the present petition before Hon'ble the Chief Justice for appropriate orders.

{S.S.Saron}
Judge

23-08-2007
** Mandeep **

Crl Misc 44851-M of 2007

Mr.Gaurav Mohunta, Advocate, for the petitioner

Mr.Amit Khatkar, AAG,Haryana

Heard learned counsel for the parties.

The petitioner seeks anticipatory bail in a case registered against him for the offences under Sections 498-A/304-B/34 IPC. The FIR has been registered on the statement of Mahavir son of Ram Singh whose brother's daughter,namely,Sharmila Devi was married to Mahavir son of Kanwar Singh. It is alleged that the brother of the complainant had given Rs.1,21,000/-in marriage and Rs.42,000/-as cash for purchasing the motor-cycle. Inspite of this, the in-laws of Sharmila Devi deceased had harrassed her. The petitioner is the father-in-law of the deceased Sharmila Devi. The allegations are that the deceased was harassed for bringing inadequate dowry. The deceased died three and a half years after marriage. Learned counsel for the petitioner has submitted that, in fact, the petitioner is employed as Clerk in GLF, Hisar, and he was in his office at the time of occurrence. It is submitted that when he came to know of the occurrence,he took half day's leave and took the victim to the hospital. However, Sharmila Devi unfortunately died and she was declared dead by the doctors. It is also stated that the petitioner and his wife have been residing separately from the son and daughter-in-law which is evident from the ration card (Annexure P-1). Learned counsel for the State has submitted that during the course of investigation, it has been found that during the occurrence, the petitioner had held the legs of the deceased.

After giving my thoughtful consideration to the matter, it may be noticed that the name of the petitioner is specifically mentioned in the FIR.

Keeping in view the nature of allegations and the role attributed to the petitioner, no ground for grant of anticipatory bail is made out.

Dismissed.

26-09-2007 **{S.S.Saron}**

- **MandeepKaur**

Judge

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRIMINAL REVISION 836 OF 2007

DECIDED ON : 03-10-2007

Hansa Singh & others

....Petitioners

Versus

State of Punjab

....Respondent

CORAM : HON'BLE MR.JUSTICE S.S.SARON

Prsent: Mr.L.S.Sidhu, Advocate, for the petitioners

Mr.I.P.S.Sidhu, Senior DAG, Punjab

S.S.SARON, J (ORAL)

This criminal revision petition has been filed by the petitioners, namely,Hansa Singh, Beeta Singh and Ghokar Singh against the judgement and order dated 13-04-2007 passed by the learned Additional Sessions Judge,Mansa, whereby their appeal against the judgement and order dated 26-07-2006 passed by the learned SDJM, Sardulgarh, has been dismissed.

A wireless message was received at the police station that one Sukhmander Singh in an injured condition was admitted at the Primary Health Centre, Sardulgarh. The police went to the hospital and recorded his statement after taking necessary consent of the doctor. It was stated by Sukhmander Singh injured that six months prior to the occurrence,he had employed Gurdev Kaur ,mother of petitioner Hansa Singh to clean the cowdungs of the cattle. He gave an advance Rs.2000/-to Gurdev Kaur without executing any writing in that regard but with an understanding that

Rs.200/-would be deducted every month as wages of Gurdev Kaur. Gurdev Kaur worked for only 20 days. Thereafter, the complainant Sukhmander Singh went to her house to ask her either to report for work or to return the borrowed amount. Her son Hansa Singh-petitioner No.1 who was also prsent in the house told the complainant that they would return the borrowed money. Thereafter, the complainant demanded his money three-four times which was assured to be returned. On 18-12-2001, the complainant again visited the house of accused Hansa Singh-petitioner No.1 where the other two petitioners were also present as they were best friends. The complainant told the petitioner-Hansa Singh that there is already considerable delay in return of money which should be returned. The petitioners, however, flatly refused to return the money. In the evening, the complainant Sukhmander Singh had gone to his land. All the three petitioners armed with gandasas came there. They caused injuries to the complainant-Sukhmander Singh. Hansa Singh-petitioner No.1 raised lalkara and gave gandasa blow from its reverse side on the head of the complainant. Beeta Singh-petitioner No.2 gave a gandasa blow with its sharp side on the left leg. Accused Ghokar Singh gave 3 gandasa blows with its reverse sides on the right middle finger, left ring finger and left thigh. The complainant then fell on the ground in his land and was rescued by his mother and son.

The learned trial Court after considering the evidence and material on record, convicted petitioner No.2-Beeta Singh for the offence under Section 326 IPC. He was sentenced to undergo RI for 2 years and to pay a fine of Rs.500/-and in default of payment of fine, to further

undergo RI for 3 months. He was also sentenced and convicted for the offences under Sections 325/34 IPC and under Sections 323/34 IPC. Petitioner No.3-Ghokar Singh was convicted for the offences punishable under Sections 326/34 IPC and to suffer RI for 2 years besides he was convicted and sentenced to undergo RI for one year and to pay fine of Rs.300/-for the offence punishable under Section 325 IPC as also to undergo RI for 6 months and to pay a fine of Rs.200/-for the offences under Sections 323/34 IPC. Hansa Singh-petitioner No.1 was sentenced to undergo RI for 2 years and to pay fine of Rs.500/-,for the offence under Section 326/34 IPC and in default to further undergo RI for 3 months besides he was sentenced to undergo imprisonment for one year and to pay a fine of Rs.300/- for the offences under Sections 325/34 IPC as also to undergo RI for 6 months and to pay a fine of Rs.200/-for the offence under Section 323 IPC. All the sentences as imposed on each of the petitioners were ordered to run concurrently.

An appeal filed by the petitioners, as already noticed, was dismissed by the learned Additional Sessions Judge, Mansa, which is assailed by them. At the time of motion hearing on 11-05-2007, learned counsel for the petitioners limited his prayer for consideration on the quantum of sentence. Accordingly, notice of motion was issued to A.G.Punjab.

Learned counsel for the petitioners submits that petitioners-Hansa Singh and Beeta Singh have undergone more than one year of sentence besides they are not previous convicts. Petitioner-Ghokar Singh, it is stated, has undergone six and a half months of sentence and he is also not a previous convict. It is stated that the occurrence took place in the

village when the mother of Hansa Singh was asked to perform her work or return the money. Therefore, it is submitted that keeping in view the totality of the circumstances, the sentences that have been imposed upon them, are liable to be reduced to that already undergone.

In response,learned State counsel has opposed the prayer. It is submitted that the petitioners are not entitled for any relief and the sentences that have been imposed are commensurate with the gravity of offence which is attributed to them. Therefore, it is submitted that the sentences as imposed may be maintained.

The occurrence in the present case took place in the year 2001. Petitioners, Hansa Singh and Beeta Singh have undergone as per their custody certificates, more than one year and one month of sentence. Ghokar Singh-petitioner has undergone six and a half months of sentence. The petitioners are not previous convicts and no other case is pending against them. In the circumstances, the ends of justice would be met if the sentence of imprisonment that has been imposed in respect of each petitioner,is reduced to that already undergone and fine that has been imposed, be increased for all the sentences to Rs.10,000/-in respect of each petitioner which shall be payable to the victim Sukhmander Singh. In other words each petitioner shall be liable to pay a sum of Rs.10,000/-each to the injured Sukhmander Singh. Learned counsel for the petitioners has stated that the petitioners may be granted two months' time after they are released from jail to make the payment. The said request is reasonable.

Accordingly, keeping in view the facts and circumstances of the case and also the totality of this case, and the fact that the petitioners have undergone some imprisonment as also the fact that parties are of the

same village and there should not be any rancour amongst themselves in the village on account of the unfortunate dispute that had occurred, it would be just and expedient to reduce the sentence of imprisonment to that already undergone and to increase the sentence of fine to Rs.10,000/-in respect of each petitioner to be payable to the victim Sukhmander Singh.

Accordingly, this petition is disposed of and the sentence that has been imposed is modified to the extent that the sentence of imprisonment is reduced to that already undergone. The petitioners shall within two months of their release, deposit a fine of Rs.10,000/-each in the trial Court. They shall be released for a period of two months, on their furnishing personal bonds and surety with an undertaking that they shall serve the remaining sentence as has been imposed in the event of their failure to pay the fine. In case the fine is deposited by them, the sentence imposed upon them shall be modified as above. In default of payment of fine, the sentence as imposed, shall remain operative and intact. The amount of fine on recovery shall be paid to Sukhmander Singh-complainant.

03-10-2007 {S.S.Saron}
MandeepKaur Judge